

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.308/Bang/2022
Assessment Year : 2017-18

Ms. Vimala Devi A. Kanunga, M/s. Jainam Syndicate, Near Shankar Math, Kanchagargalli, Hubli – 580 028. <b>PAN : AMUPK 3079 M</b>	Vs.	PCIT, Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri. Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.08.2022
Date of Pronouncement	:	30.08.2022

**ORDER**

*Per N. V. Vasudevan, Vice President*

This is an appeal by the assessee against the order dated 22.03.2022 of Principal Commissioner of Income Tax (PCIT), Hubli, passed under section 263 of the Income Tax Act, 1961 (Act), relating to Assessment Year 2017-18.

2. The assessee, an individual engaged in wholesale business of textile materials, filed her return of income for the Assessment Year 2017-18 declaring a total income of Rs.5,46,640/-. The case of the assessee was selected for limited scrutiny under CASS to verify cash deposited in Bank Accounts of tRs.70,43,000/- during the demonetization period. The details

of the cash deposited in 5 Bank Accounts of the assessee are given by the Assessing Officer (AO) in paragraph – 4 of his Assessment Order. In paragraph – 6 of the Order of the Assessment, the AO has recorded the fact that she had called details from the Bank and found that Rs.63,43,000/- were old currencies that were demonetized that had been deposited by the assessee in her bank account. The assessee explained that the source of cash was cash received on sales made during the course of business. The AO called for the monthly purchases and sales of the assessee and in paragraph 7 of the order recorded the fact that on perusal of the details of purchases and sales, it was evident that purchase and sales during October, 2016, was three fold than other months. The AO compared cash sales, cash purchases, cash deposits, withdrawals during demonetization period. She found that cash receipts from debtors had doubled and cash sales increased five times in October, 2016. She drew a table in this regard which is at para 8.1 of Assessment Order and drew a conclusion that cash purchases and sales increased unusually from the months of May, 2016 to October, 2016, to enable assessee to explain cash deposit in the Bank Account. The AO thereafter added a sum of Rs.39,49,710/- to the total income of the assessee with the following remarks:

*“8.2 In order to verify if there were actual purchases, the ledger account details of sundry creditors —M/s. Vishnu and Company and M/s. Swadeshi Handloom which the assessee had produced as proof in respect of sundry creditors (where outstanding liability exceeded 5 lakhs) was then cross verified for any increase in purchases during the months of October 2016. The ledger account did not show any huge purchase during the month of October 2016. The assessee has stated that they have not maintained month-wise stock details. The cash book of the assessee also did not show any cash purchases. Therefore, it is very much evident that the assessee was inflating both purchases and sales for the purpose of inflating his cash in hand as on 08/11/2016 which obviously was unaccounted money and due to de-monetisation*

*had to be deposited in banks. The cash deposited during demonetisation was Rs. 70,43,000/-.*

*8.3 From' Table 2 above, it is seen that after the month of October 2016, the aggregate highest cash received {cash sales plus cash receipts) is during the month of May 2016 which amounts to Rs.48,90,727/-[36,92,422+11,98,305] while the cash receipts during the month of October 2016 is Rs.88,40,436/-. Thus, the difference amount of Rs.39,49,710/- is treated as unexplained cash credits u/s. 68 and taxed u/s. 115BBE of the IT Act, 1961 at the rate of 60%. Further, penalty u/s. 271AAC is Initiated in respect of the unexplained cash credits.”*

3. The PCIT in exercise of powers under section 263 of the Act was erroneous and prejudicial to the interest of the Revenue for the following reasons:

*“The assessment order for A.Y 2017-18 has been passed in your case u/s. 143(3) dated 18/12/2019 determining total income of Rs. 45,33,579/-.*

*You have deposited an amount of Rs.70,43,000/- during the demonetisation period. Out of the said amount, Rs.39,49,710/- being unexplained cash credit was brought to tax by the Assessing Officer. You. have shown huge sales and purchases during the month of Oct-2016 which is not in commensurate with the transactions of other periods during the year as well as corresponding period of immediate preceding year. It shows that you have inflated the sales to match the closing cash balance during the month of Oct-2016 in order to justify the huge cash deposits made during the demonetisation period. **During the course of assessment proceedings, you have not substantiated the purchases and sales shown for the period Oct-2016. The huge purchases and sales shown for the month of Oct-2016. The AO should have-verified the actual purchases and sales made during Oct-2016 and give credit to the extent the sources of the cash proved, which is not done by the AO. Therefore, the enquiry which ought to be conducted for verification of the source and nature of the cash deposited during the demonetization period is not conducted by the Assessing Officer.”***

4. A show cause notice (SCN) under section 263 of the Act dated 07.03.2022 was issued by the AO.

5. The assessee in reply to the same by her letter dated 14.03.2022 submitted that in respect of the addition made by the AO in the Order of Assessment, the assessee prepared appeal before CIT(A). Pending disposal of the said appeal, the assessee opted to settle the dispute under Direct Tax Vivad Se Viswas Act, 2020 (VSV Scheme) and filed necessary forms and made payment of taxes as per the said Act. Therefore, settled issue cannot be reopened under section 263 of the Act. The assessee also submitted that the AO made proper and necessary enquiry before completing the assessment and hence no action is warranted on the grounds stated in the SCN under section 263 of the Act.

6. The PCIT however proceeded to hold that the order of the AO was erroneous and prejudicial to the interest of the Revenue because the AO did not make adequate and required enquires. The following were the conclusions of the PCIT in this regard:

*“3. Even after the above observations, the Assessing Officer has not taken these findings to its logical conclusion. It was necessary for the Assessing Officer to have examined the inflating of purchases and sales and the cash in hand, to determine the unaccounted money which was deposited by the assessee in her bank accounts. The Assessing Officer has not carried out necessary enquiries but has made only an estimated addition based on the aggregate highest cash received from cash sales and cash receipts. This was not appropriate in view of the findings of the AO discussed above. The Assessing Officer should instead have examined the purchases and sales and the cash in hand and conducted necessary*

*enquiries to determine the unexplained cash deposits. When the case was selected for complete scrutiny for examining cash deposited during the demonetization period, it was necessary for the Assessing Officer to examine the source of cash deposited and carry out necessary investigation in accordance with law and CBDT guidelines. This was all the more necessary in view of the findings of the AO discussed above. The Assessing Officer has not conducted necessary inquiries and has not made the additions required as per law. The assessee failed to furnish a satisfactory explanation regarding the source of cash deposited in the bank accounts and the amount remained unexplained, but the required addition has not been made in the assessment order.”*

7. On the question when the dispute is settled under VSV Scheme, the PCIT held that the same would be valid only to the extent of addition made by the AO and not the entire cash deposit in the Bank Account. Therefore the action under section 263 of the Act to the extent of the cash deposits that remains unexplained less the addition settled under VSV Scheme is valid.

8. The PCIT also without notice to the assessee directed AO to verify any contravention of provisions of section 40A(3) of the Act. This direction was not valid because this was not part of SCN under section 263 of the Act and the PCIT did not put the assessee on notice about his intention to revise the order of AO on this ground also.

9. The final conclusion of the PCIT was as follows:

*“12. In view of the above discussion, the assessment order u/s 143(3) is erroneous and prejudicial to the interests of Revenue in terms of section 263. The assessment order is accordingly, set aside*

*for this purpose and the Assessing Officer is directed under section 263, to make a fresh assessment in accordance with law, after considering the above. The Assessing Officer shall examine the cash deposits during the demonetization period and other issues discussed above, in accordance with law and CBDT guidelines. He shall give the assessee an opportunity to furnish necessary evidence to establish his claim and explain why the proposed additions be not made to income. The Assessing Officer shall consider the facts, and the results of any enquiries made, as well as the explanation furnished by the assessee. and make a fresh assessment in accordance with law. The Assessing Officer will also examine the assessee's claim regarding declaration under the VsV Scheme and decide the claim in accordance with law.”*

10. Aggrieved by the order of the PCIT, the assessee is in appeal before the Tribunal. We have heard the rival submissions. The learned Counsel for assessee reiterated stand of the assessee which is in line with the reply to the SCN under section 263 of the Act. She relied on decision of Madras High Court in the case of Gopalakrishnan Rajkumar Vs. PCIT (2022) 40 taxmann.com 349 (Mad.) wherein the Hon'ble Court held that when disputes are settled under VSV Scheme, no proceedings under section 263 of the Act can be initiated on the same. Reliance was placed on decision of Bombay High Court in the case of PCIT Vs. M/s. Universal Music India Pvt. Ltd., ITA No.238 of 2018, judgment dated 19.04.2022 for the proposition that the PCIT in exercise of his powers under section 263 of the Act cannot take up issues not stated in SCN under section 263 of the Act unless he puts the assessee on notice on the said issue. The learned DR relied on the order of the PCIT and reasons given in the impugned order.

11. We have carefully considered the rival submissions. We have already set out as to how and what enquiries the AO made while completing the assessment. The case was picked up for limited scrutiny of cash

deposits in Bank Account during demonetization period. The AO examined cash purchases and sales and came to a conclusion that purchases and sales from May, 2016 to October, 2016, were inflated and to the extent of such inflation, the AO drew an adverse inference. The PCIT is of the view that the addition should have been on actual purchases and sales proved by the assessee and not on an adhoc basis. The law is well settled that power under section 263 of the Act cannot be exercised to substitute the view of the PCIT with that of the AO when the view taken by the AO was a possible view. It is equally well settled that the PCIT cannot invoke powers under section 263 of the Act directing a fishing or raving enquiry. In a case where enquiry is directed to be made by the PCIT, he must give a finding as to how the enquiry made by the AO was wrong. In this regard, the law has been stated by the Hon'ble Bombay High Court in the case of CIT Vs. Gabriel India Pvt. Ltd., 203 ITR 108 (Bombay). In the present case, the enquiry made by the AO was proper and the AO has drawn proper conclusions on material available before her. The view taken by the AO was a possible view rather a very pragmatic view. The PCIT may not agree with that view. However, the powers under section 263 of the Act cannot be exercised to substitute the view of the PCIT with that of the AO. On the facts of the case, we are satisfied that the power under section 263 of the Act was not properly exercised and hence we quash the said order. Since we have quashed the order on merits, we do not wish to go into the question regarding VSV Scheme and its effect on the power under section 263 of the Act. We also hold that the question of invoking the provisions of section 40A(3) of the Act does not arise firstly because the limited scrutiny was only to verify cash deposit in Bank Account. Secondly, the issue was not subject matter of SCN under section 263 of the Act nor was the assessee put on notice regarding the said issue by the PCIT in the proceedings under section 263 of the Act.

11. In the result, appeal of the assessee is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(CHANDRA POOJARI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N. V. VASUDEVAN)**  
**VICE PRESIDENT**

Bangalore,  
Dated: 30.08.2022.  
/NS/\*

Copy to:

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.